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09/768,969	01/24/2001	Dave W. Gordon	2096.00C	2336

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EXAMINER

PATTERSON, MARIE D

ART UNIT	PAPER NUMBER
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3728

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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 14

Application Number: 09/768,969
Filing Date: January 24, 2001
Appellant(s): GORDON, DAVE W.

Frank J. Catalano
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/15/02.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief contains a statement that there are no related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 9-13, 15, and 16 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,220,791	BULZOMI	6-1993
4,887,368	LATZKE	12-1989
4,658,515	OATMAN	4-1987

4,023,281

TERRY

5-1977

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 9-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bulzomi in view of Oatman or Latzke.

Bulzomi shows a foot cover comprising an upper portion (1) with an outer covering (16), a radiant barrier (6), and an inner covering (17), and a bottom panel/sole comprising an outer layer (11), an inner layer (7), and a radiant barrier (11a and 7a) and discusses the use of temperature control footwear to provide insulating and heat retaining properties (see column 1 lines 55-65) substantially as claimed except for orientation of the radiant barrier layers. Oatman or Latzke teaches orienting radiant barrier layers so that they reflect the heat inwardly toward the wearer's foot (see Oatman abstract, last 5 lines or Latzke column 2 lines 55-67). It would have been obvious to orient the radiant barrier layers as taught by Oatman or Latzke so that the layer reflects heat inwardly in the foot cover of Bulzomi to heat the wearer's foot in cold weather as opposed to cooling the foot in warm conditions.

Claims 9-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latzke in view of Bulzomi.

Latzke provides a radiant barrier layer (2) between inner and outer layers (1 and 3) and the use of such to reflect heat inward toward a wearer substantially as claimed except for the exact formation of the element of apparel, i.e. foot cover (note the discussion of foot coverings in column 7 lines 24-25). Bulzomi teaches forming a foot

Art Unit: 3728

covering with a barrier layer incorporated in and upper and sole. It would have been obvious to make a foot covering as taught by Bulzomi with the materials of Latzke to allow the foot to be uniformly warmed.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 9-13 and 15 above, and further in view of Terry.

Bulzomi or Latzke as modified above shows a foot cover substantially as claimed except for an elastic ankle. Terry teaches providing an elastic (30) at the ankle portion of a foot cover. It would have been obvious to provide elastic as taught by Terry in the foot cover of Bulzomi or Latzke as modified above to provide a tighter fit and to prevent the heat from exiting and entering the top of the foot cover.

(11) Response to Argument

In response to applicants' argument that Bulzomi reflects heat outwardly not inwardly, Bulzomi is clearly directed towards a foot covering for regulating the temperature of a wearers' foot in relation to an environment. Bulzomi clearly provides one of ordinary skill with motivation for reversing the orientation of the radiant barrier layer by suggesting the use of temperature control footwear to provide insulation and heat retaining properties for use in cold environments (column 1 lines 55-65). It would have been obvious to modify the footwear of Bulzomi to retain heat if that is the temperature control desired/needed by the wearer of the environment which the footwear is going to be used in , especially in view of the disclosure of Bulzomi and the express teachings of Latzke and Oatman. The use/orientation of layers of temperature controlling footwear for reflecting and retaining heat inwardly is clearly taught by the

Art Unit: 3728

references to Oatman and Latzke. In view of the suggestion in Bulzomi and the express teachings of either Oatman or Latzke, the resultant foot covering would reflect heat inwardly.

In response to applicants' arguments directed towards Latzke, the aluminum foil (column 4 line 49) layer (2) is the same material suggested by applicant for the radiant barrier layer (as recited on page 9 line 16-19) and is also the same material disclosed by Bulzomi (column 3 lines 11-12) and therefore this layer is considered to be a radiant barrier layer as disclosed and claimed by applicant. The metal layer (2) of Latzke is recited as causing the heat to be uniformly distributed within the device and the device having an excellent storage and distribution of heat to the body which would otherwise be lost to the environment. Since the device prevents loss of heat to the environment, it must be reflected/kept in the device.

In response to applicants' arguments directed towards Oatman, Oatman has not been applied as an anticipatory reference or as a reference for teaching any specific order of layers, it has been applied merely as a teaching for orienting a reflective layer to reflect the heat inwardly towards a wearer.

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 3728

Respectfully submitted,



Marie Patterson

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Art Unit 3728

MDP

November 7, 2002

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